

# CRS Report for Congress

## The U.N. Population Fund: Background and the U.S. Funding Debate

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# The U.N. Population Fund: Background and the U.S. Funding Debate

## Summary

The United Nations Population Fund (UNFPA), established in 1969, is the world's largest source of population and reproductive health programs and the principal unit within the United Nations for global population issues. In 2006, the organization provided services in some 154 developing and transition countries, with funds totaling \$605.5 million, drawn exclusively from voluntary contributions made by 180 nations and some foundations.

The United States, with strong support from Congress, was an important actor in the launch of UNFPA in 1969. During the mid-to-late 1960s, Congress began to express heightened concern over the impact of rapid population growth on development prospects in poor countries. In 1967, Congress earmarked funds for population assistance programs, urging the United States to channel family planning resources through the United Nations and other international organizations.

In its first 25 years, UNFPA moved from an organization focused on statistical collection and analysis to an agency providing maternal and child health/family planning assistance. UNFPA played a large role in shaping the 1994 International Conference on Population and Development (ICPD), held in Cairo. The Cairo Conference marked a turning point in the international debate over the impact of population issues on global development, and established a policy framework called the Plan of Action that continues to guide current family planning and reproductive health policies, including the work of UNFPA. The Plan integrated population concerns into the broad context of development — concluding that education and health, including reproductive health, were prerequisites for sustainable development.

During the past two decades, there has been a continuing and contentious debate within the United States, and especially within Congress, as to whether the United States should financially support UNFPA. The issue has centered on the extent to which, if any, UNFPA aids China's coercive family planning programs and policies. In 14 of the past 23 years, the United States has not contributed to the organization as a result of executive branch determinations that UNFPA's program in China was in violation of the Kemp-Kasten amendment banning U.S. aid to organizations involved in the management of coercive family planning programs. For the past five years, the Bush Administration has transferred UNFPA appropriations to other foreign aid activities.

While UNFPA receives voluntary contributions from many countries and some private foundations, most of its income comes from a handful of donors. The Netherlands and Japan recently have been the largest contributors. Throughout the last decade, when the United States has contributed to UNFPA programs, the U.S. contributions have represented about 8% of UNFPA's regular budget.

This report, originally drafted by Larry Nowels, will be updated as policy changes or congressional actions warrant.

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# The U.N. Population Fund: Background and the U.S. Funding Debate

The United Nations Population Fund (UNFPA), which began operations in 1969 as the U.N. Fund for Population Activities, is the world's largest source of population and reproductive health programs and the principal unit within the United Nations for global population issues. In 2006, the year for which the most recent figures are available, the organization provided services in some 154 developing and transition countries, with funds totaling \$565 million, drawn exclusively from voluntary contributions made by 171 nations and some foundations.

During the past two and a half decades, there has been a continuing and contentious debate within the United States, and especially within Congress, as to whether the U.S. should financially support the organization. The issue has centered on the extent to which, if any, UNFPA aids China's coercive family planning programs and policies. In nine of the past 23 years, the United States has been one of the leading contributors to UNFPA. For the other 14 years, however, the United States has not made voluntary contributions to the organization as a result of executive branch determinations that UNFPA supported coercive Chinese practices or because of legislative prohibitions. Most recently, the Bush Administration for the past six years has found UNFPA to be ineligible for U.S. funding and transferred proposed annual contributions of between \$25 and \$34 million to other foreign aid activities. Future U.S. contributions to UNFPA may be considered during the 110<sup>th</sup> Congress as part of the debate on the annual Foreign Operations appropriation bill and other foreign policy legislation.

This report provides an overview of the U.N. Population Fund, its current mission and operations, and recent funding trends. It further discusses the role of the United States in supporting UNFPA programs, the varying interpretations by several Administrations of legislative authorities pertaining to UNFPA's eligibility for American resources, and congressional debates over how much and under what conditions the United States should voluntarily contribute to UNFPA operations. Finally, it reviews the findings of several private and U.S. government investigations of China's family planning programs and the role UNFPA plays in their implementation.

## **UNFPA: Its Origins and Operations**

The United Nations, since its earliest days, has maintained an interest in population issues. In 1947, the United Nations established a Population Commission that collected and analyzed global population data and supported member government efforts to examine information about national populations. Following

several years of U.N. debate over the rapid rise of the world's population, the General Assembly approved a resolution in 1966 calling on the United Nations and other international organizations to extend technical assistance on population matters.

In 1967, the U.N. Secretary-General created a Trust Fund for Population Activities, which in 1969 was renamed the U.N. Fund for Population Activities (UNFPA). Initially, UNFPA was administered by the United Nations Development Program (UNDP), the organization's primary international development organ. Within a few years, at the direction of the General Assembly, UNFPA had expanded its operations beyond statistical collection and analysis to the provision of maternal and child health/family planning, communication and education, and population policy assistance. By 1972, UNFPA was operating in 78 countries with a budget of over \$30 million. With such rapid growth in the Fund's scope and programs, UNFPA became a separate entity under the direct authority of the General Assembly, with the same status as UNDP and the U.N. Children's Fund (UNICEF).<sup>1</sup>

In these initial years, the United States provided the majority of UNFPA funding through voluntary contributions. In 1968 and 1969, when seven governments extended financial support, the \$4 million transfer by the United States represented nearly 80% of total contributions. By 1972, the number of donors had grown to 52, but the United States remained by far the largest source of funds, with 46% of the total. Over the next decade, the U.S. share declined to about 25% as other nations increased their contributions (see **Table 1**).

## **UNFPA and World Population Conferences: 1974 and 1984**

UNFPA played a significant role in the World Population Conferences, held a decade apart in Bucharest (1974) and Mexico City (1984). Following the 1974 meeting of 133 nations, the U.N. General Assembly called for the expansion of international population assistance, with UNFPA taking a lead role, to implement the plan of action endorsed at the Bucharest Conference. Partially due to the growing attention on world population issues, UNFPA operations expanded rapidly during this period. The scope of UNFPA's work also broadened, so that by the early 1980s, the organization focused on eight primary areas:

- Family planning, including delivery systems and fertility regulation techniques;
- Data collection;
- Formulation and evaluation of population policies and programs;
- Communications and education;
- Population dynamics, including demographic projections and their analysis;
- Implementation of policies and programs, including efforts "beyond family planning" related to law and population, status of women, and economic policies;

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<sup>1</sup> UNFPA. "What it Is; What it Does." 1983; and UNFPA at 30 Years — Fact Sheets. October 26, 1999. (Hereafter cited as UNFPA, What it Is; What it Does.)

- Special programs focusing on women, children, the elderly, the disabled, and programs to promote social justice; and
- Multisector activities, including support for population conferences and training.<sup>2</sup>

## **The 1994 Cairo Conference and UNFPA's Changing Mandate**

UNFPA was a major catalyst in organizing, financing, and implementing outcomes of the 1994 International Conference on Population and Development (ICPD), held in Cairo. The Cairo Conference marked a turning point in the international debate over the impact of population issues on global development and established a policy framework that continues to guide current family planning and reproductive health policies. The Plan of Action that emerged from the Cairo Conference, to a much greater extent than before, integrated population concerns into the broad context of development, concluding that education and health (including reproductive health), were prerequisites for sustainable development. The Conference shifted population program strategies away from demographic goals and toward human welfare and poverty reduction objectives. The Conference further focused far more attention on the status and empowerment of women. Moving beyond strictly health issues, the conference endorsed programs to promote expanded opportunities for the education of women and girls, to end gender discrimination and violence against women, and to strengthen women's grassroots activist organizations.<sup>3</sup>

Since the Cairo Conference, UNFPA programs have and continue to be guided by the ICPD's Program of Action, which contains the following goals:

- Universal access to reproductive health services by 2015;
- Universal primary education and closing the gender gap in education by 2015;
- Reducing maternal mortality by 75% by 2015;
- Reducing infant mortality; and
- Increasing life expectancy.

In 1999, an additional goal — reducing HIV infection rates in persons 15-24 years of age by 25% in the most-affected countries by 2005 and by 25% globally by 2010 — was incorporated into the Program of Action and integrated into UNFPA's work.<sup>4</sup>

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<sup>2</sup> UNFPA. *What it Is; What it Does*. 1983.

<sup>3</sup> See, CRS Report 94-533, *Population and Development: The 1994 Cairo Conference*, by Curt Tarnoff. (Archived; available on request from author).

<sup>4</sup> UNFPA Background. Found at UNFPA website [<http://www.unfpa.org/hiv/index.htm>].

## UNFPA Operations Today

**Budget Trends.** With income of \$605.5 million, the 2006 UNFPA budget was its largest in recent years (see **Table 1**). UNFPA derives most of its income from voluntary contributions to its regular budget which finances continuing core country programs and the organization's administrative costs. A growing but less flexible source of revenue has been from supplementary donations that are provided either for cost-sharing purposes or for placement in trust funds. Through supplementary resource transfers, donors can earmark exactly how their contributions will be spent. In 2000, for example, the Netherlands provided \$41 million specifically to procure contraceptive commodities.

While UNFPA receives voluntary contributions from many countries — 180 in 2006 — and from some private foundations, most of its income for regular country programs and operating expenses comes from a handful of donors. During the past 10 years, more than 70% of UNFPA's regular donations have come from six donors (see **Table 2**). The Netherlands and Japan consistently have been the largest contributors. In years when the United States has contributed to UNFPA programs, the American transfer has represented about 8% of UNFPA's regular budget, making it the 5<sup>th</sup> or 6<sup>th</sup> largest donor in those years.

**Table 1. UNFPA Income**

(current \$ in millions)

Year	Regular	Supple- mental	Total
97	\$293	\$33	\$326
98	\$273	\$36	\$309
99	\$250	\$38	\$288
00	\$262	\$104	\$366
01	\$268	\$128	\$396
02	\$260	\$113	\$373
03	\$292	\$106	\$398
04	\$332	\$174	\$506
05	\$366	\$199	\$565
06	\$389	\$216	\$605

**Source:** UNFPA.

**Table 2. UNFPA Major Contributors**

(contribution as a % of UNFPA regular budget)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Netherlands	15.2%	14.3%	17.1%	19.3%	18.8%	21.1%	23.2%	21.7%	20.7%	20.9%
Japan	12.8%	17.9%	19.3%	18.4%	18.2%	15.2%	13.5%	11.9%	10.2%	9.2%
Norway	9.7%	10.0%	10.1%	8.8%	9.0%	9.7%	11.3%	10.0%	10.3%	11.3%
Denmark	11.5%	12.2%	11.2%	9.1%	8.8%	8.7%	8.7%	8.9%	8.4%	8.6%
U.K.	7.9%	8.4%	9.6%	8.5%	8.2%	10.2%	10.3%	11.1%	10.0%	10.5%
Sweden	5.6%	6.0%	6.8%	7.1%	6.2%	7.3%	8.2%	10.8%	13.3%	15.3%
United States	8.5%	7.3%	0.0%	8.2%	8.0%	0.0%	0.0%	0.0%	0.0%	0.0%

**Source:** UNFPA annual reports, 1997-2006.



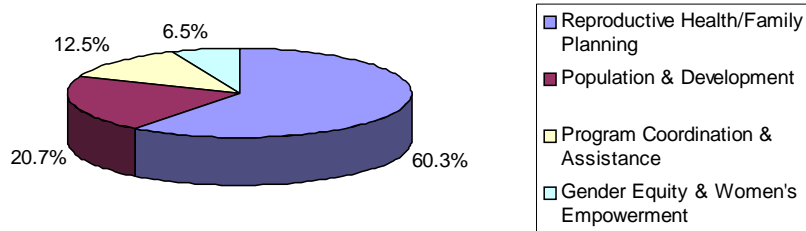
**UNFPA Program Priorities.** Currently, UNFPA activities are focused in seven program areas that support the broad strategy of improving reproductive health:

- **Preventing HIV/AIDS** — promoting safer sexual behavior among young people, ensuring that condoms are available and widely and correctly used, empowering women to protect themselves and their children, and encouraging men to take responsibility for preventing the spread of HIV/AIDS;
- **Making motherhood safer** — expanding the availability of emergency obstetric care for women who develop complications, having skilled workers available, and meeting unmet needs for contraceptive services;
- **Supporting young people** — providing accurate information, counseling, and services to prevent unwanted pregnancies and sexually transmitted diseases;
- **Promoting gender equality** — promoting legal and policy reforms, supporting gender-sensitive data collection, and backing programs that empower women economically;
- **Assisting in emergencies** — providing supplies and services to protect reproductive health during disasters;
- **Securing reproductive health supplies** — coordinating the delivery of supplies, forecasting needs, and building logistical capacity at the country level; and
- **Preventing and treating fistula<sup>5</sup>** — providing access to medical care, increasing education and family planning services, postponing pregnancy for young girls, improving girls' nutrition, and repairing physical and emotional damage.

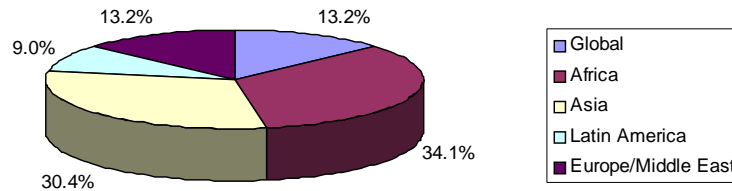
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<sup>5</sup> Obstetric fistula occurs from prolonged child labor, particularly when labor lasts two days or more. When a woman or girl is unable to push her baby out, the pressure from the baby's head can interrupt blood flow to tissues in the pelvic area. Ultimately, the woman passes the baby after it dies, as the decomposed body is smaller than the live one. This can cause incontinence, nerve damage, and chronic pain, which can make walking difficult. For more information on UNFPA activities regarding fistula, see CRS Report RS21773, *Reproductive Health Problems in the World: Obstetric Fistula: Background Information and Responses*, by Tiaji Salaam-Blyther.

**Figure 1. UNFPA Program Functions, FY2006**



**Figure 2. UNFPA Assistance by Region, FY2006**



In the 13 years since the Cairo Conference, UNFPA has allocated roughly 60% of its annual resources to reproductive health and family planning service programs and 20% to strategies for population and development. The balance of UNFPA spending focuses on coordinating activities, gender equity, and women's empowerment programs.<sup>6</sup>

**Regional and Country Program Focus.** Over the past decade, roughly 33% of UNFPA programs have been carried out in sub-Saharan Africa, with an additional 28% focused in Asia. In 2006, UNFPA maintained its largest program in Peru (\$12 million), followed by Sudan (\$11.3 million), Indonesia (\$10.3 million), Mozambique (\$10.1 million), and Democratic Republic of the Congo (\$9.4 million). UNFPA program expenditures in China have ranged between \$4 million and \$5

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<sup>6</sup> UNFPA. *Annual Report 2006*. Additional data also drawn from prior-year annual reports. UNFPA's 2007 annual report has not yet been released.

million annually in recent years. In 2006, UNFPA contributed approximately \$3.7 million to projects in China.

## U.S. Policy Towards UNFPA

The United States was an important actor in the launch of UNFPA in 1969. During the mid-to-late 1960s, Congress began to express heightened concern over the impact of rapid population growth on development prospects in poor countries, noting that the world's population was growing by about 2% annually compared with only a 1% growth in food production. In 1967, for the first time, Congress amended the Foreign Assistance Act of 1961 to specifically authorize and earmark funds for population assistance programs, urging the United States especially to channel family planning resources through the United Nations and other international organizations. Some Members believed that such earmarks were necessary because the State Department and the U.S. Agency for International Development (USAID) had not been giving the issue adequate attention.<sup>7</sup>

These initial U.S. contributions, however, were conditioned on the requirement that other donors match the American payment in an equal amount. This incentive helped UNFPA exceed its 1970 projected resource goal when 22 other countries contributed a combined \$7.7 million. In 1971, with the same matching requirement tied to the U.S. pledge of \$15 million, UNFPA received donations of \$14.5 million from 45 nations.<sup>8</sup> As shown in **Table 3**, U.S. contributions continued to climb throughout the 1970s and early 1980s, peaking in 1984 at \$38.2 million. At the same time, however, the number and size of transfers from other donors rose faster, so that the share of UNFPA resources from the United States declined from 50% to around 27%.

The largest UNFPA contribution earmarked by Congress — \$46 million — was enacted in the FY1985 foreign aid appropriation, P.L. 98-461. However, only a portion of these funds — \$36 million — was transferred to the organization as U.S. policy and its support for UNFPA shifted.

## 1984 Review of U.S. Funding for UNFPA

In August 1984, government representatives from around the world met in Mexico City for the 2<sup>nd</sup> U.N. International Conference on Population. At the conference, the Reagan Administration announced new eligibility requirements for organizations receiving U.S. bilateral population assistance funds. The new policy stipulated that no non-governmental organizations (NGOs) that received population assistance funding from the United States could actively promote or perform abortion as a family planning method other countries. This change became known as the

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<sup>7</sup> U.S. Congress. Senate Committee on Foreign Relations. *Foreign Assistance Act of 1967; report to accompany S. 1872*. S.Rept. 90-499. August 9, 1967, p. 24.

<sup>8</sup> U.S. Agency for International Development. Development and Humanitarian Assistance; FY1973 Program Presentation to Congress. p. L-15.

“Mexico City policy” and was applied by the Reagan and George H.W. Bush Administrations for nine years, reversed by President Clinton in 1993, and re-instituted by President George W. Bush in 2001.<sup>9</sup>

**Table 3. U.S. Contributions to UNFPA**  
(current \$ in millions)

Calendar Year	U.S. Contribution	% of Total UNFPA Funds	Calendar Year	U.S. Contribution	% of Total UNFPA Funds
1968	\$1.7	79.3%	1988	\$0.0	—
1969	\$2.3	79.3%	1990	\$0.0	—
1970	\$7.5	50.0%	1991	\$0.0	—
1971	\$14.2	50.0%	1992	\$0.0	—
1972	\$14.0	46.1%	1993	\$0.0	—
1973	\$17.9	42.2%	1994	\$40.0	15.1%
1974	\$20.0	37.0%	1995	\$35.0	11.2%
1975	\$20.0	31.7%	1996	\$22.8	7.4%
1976	\$20.0	25.2%	1997	\$25.0	8.6%
1977	\$29.0	31.6%	1998	\$20.0	7.2%
1978	\$28.0	27.2%	1999	\$0.0	—
1979	\$30.0	26.7%	2000	\$21.5	8.1%
1980	\$32.0	25.7%	2001	\$21.5	8.0%
1981	\$32.0	26.3%	2002	\$0.0	—
1982	\$33.8	26.1%	2003	\$0.0	—
1983	\$33.8	26.1%	2004	\$0.0	—
1984	\$38.2	27.5%	2005	\$0.0	—
1985	\$36.0	27.3%	2006	\$0.0	—
1986	\$0.0	—	2007	\$0.0	—
1987	\$0.0	—	2008	TBD	TBD

**Source:** Department of State and CRS percentage calculations since 1985.

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<sup>9</sup> For a discussion of the Mexico City policy and its eligibility requirements, see CRS Report RL30830, *International Family Planning: The “Mexico City” Policy*, by Larry Nowels.

Also at the 1984 Mexico City Conference, the Reagan Administration announced it would establish requirements for UNFPA to provide assurances that the organization was not engaged in, or was not providing funds for, abortion or coercive family planning programs. Concerns focused on UNFPA's activities related to China's coercive family planning practices. UNFPA had launched its first program in China in 1980, focusing largely on increasing Beijing's capacity for data collection and improving maternal and child health and family planning services. At the time, the Administration reportedly held up \$19 million (of \$38 million allocated for UNFPA for FY1984) until the organization could provide the necessary assurances. These funds were released later in FY1984.

Following the Mexico City Conference, attention returned to the FY1985 UNFPA earmark of \$46 million and how much the United States should transfer, given the new White House policy. AID, which at the time maintained responsibility for managing UNFPA contributions,<sup>10</sup> undertook a review in early 1985 of UNFPA's program, especially in China, to determine whether the organization was involved in any way with involuntary abortions. In March 1985 that review found that UNFPA did not include involuntary abortion as part of its programs, and therefore did not violate legislative restrictions or conditions announced at the Mexico City Conference on funding organizations engaged in involuntary practices.<sup>11</sup>

As a result, UNFPA remained eligible for U.S. support but did not receive the full earmarked amount of \$46 million. On March 30, 1985, AID contributed \$36 million to UNFPA, withholding \$10 million "to express United States disapproval of coercion in the implementation of the China population control program."<sup>12</sup> The \$10 million matched roughly the amount UNFPA spent annually in China. Because AID wanted to re-program the \$10 million for other bilateral population assistance programs, the Administration needed to overcome the specific legislative earmark of \$46 million in the FY1985 appropriation. Accordingly, the White House requested authority as part of an FY1985 supplemental appropriation submission to shift \$10 million from UNFPA to other population aid groups.

## **The Kemp-Kasten Amendment**

Rather than approve Administration's request for authority to transfer the \$10 million from UNFPA, Congress agreed to the Kemp-Kasten<sup>13</sup> amendment as part of

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<sup>10</sup> More recently, responsibility for UNFPA voluntary contributions has shifted to the State Department and the Bureau of Population, Refugees, and Migration.

<sup>11</sup> Action Memorandum for the Administrator/Acting Director of IDCA. *1985 Funding for the United Nations Fund for Population Activities (UNFPA)*, September 25, 1985, p. 1.

<sup>12</sup> Ibid.

<sup>13</sup> Initially, the amendment was referred to as the Kemp-Inouye provision, so named after its original sponsors, Representative Jack Kemp, ranking Member of the House Foreign Assistance Appropriations Subcommittee, and Senator Daniel Inouye, Ranking Member of the Senate Foreign Assistance Appropriations Subcommittee. Senator Inouye later opposed the Administration's decision not to fund UNFPA, as well as the fact that the decision was  
(continued...)

the FY1985 Supplemental Appropriations bill, H.R. 2577. The amendment states that U.S. funds would not be made available to “any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization.”<sup>14</sup> The House Appropriations Committee did not provide details on what was meant by the phrase, “support or participate in the management” of a program. However, in the “additional views” section of the Committee Report, Representative Jack Kemp stated that management of coercive programs may include providing resources to collect and analyze data necessary to the enforcement of such a program; training of the individuals who plan, manage, and carry out such a program, education and publicity about the programs; assistance to the official bodies of government that are charged with developing and implementing such a program; and other such assistance.<sup>15</sup>

Congressman Kemp also stated that the amendment would most likely affect U.S. funding of the UNFPA, “because of its involvement with the program of coercive abortion in the People’s Republic of China.”<sup>16</sup> The Kemp-Kasten amendment was enacted on August 15, 1985, as part of the FY1985 Supplemental Appropriations Act (P.L. 99-88).

**Implementation and Court Challenges.** Despite the directive from the amendment that the President, or alternatively the Secretary of State, issue any determination regarding the Kemp-Kasten amendment, President Reagan delegated his authority to the Secretary of State on September 19, 1985,<sup>17</sup> who in turn authorized the re-delegation of this authority to the Director of the International Development Cooperation Agency (IDCA).<sup>18</sup> On September 25, 1985, IDCA Administrator Peter McPherson announced the Administration’s determination that UNFPA, because of its activities in China, was participating in the management of a program of coercive abortion and involuntary sterilization. In letters to congressional leaders, Administrator McPherson cited Representative Kemp’s interpretation, as set out in his additional views in H.Rept. 99-142, of what

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<sup>13</sup> (...continued)

delegated from the President to the Secretary of State to the Administrator for USAID. For the next several years, Senator Bob Kasten, Chairman/Ranking Minority Member of the Foreign Assistance Subcommittee, was a strong supporter of the amendment, and the provision came to be referred to as “Kemp-Kasten.”

<sup>14</sup> S.Amdt. 338 to H.R. 2577, 99<sup>th</sup> Congress, June 20, 1985. Enacted as P.L. 99-88.

<sup>15</sup> U.S. House. Committee on Appropriations. Supplemental Appropriations, 1985, H.Rept. 99-142, May 22, 1985, p. 86.

<sup>16</sup> Ibid.

<sup>17</sup> A USAID memorandum drafted at the time noted that the Administration did not view congressional expectations that the President (or if delegated, the Secretary of State) should make the determination for UNFPA funding as legally binding. However, it was “considered significant” by the Executive Branch.

<sup>18</sup> IDCA had been established by Congress as a government entity to oversee and coordinate the activities of all U.S. foreign aid agencies, and the IDCA Director served simultaneously as the USAID Administrator.

characterized the participation of an organization in a coercive abortion program. The Administrator concluded that China's "one-child-per-couple policy has resulted in coerced abortion and involuntary sterilization."<sup>19</sup>

The Administrator further announced that since the Kemp-Kasten amendment and his determination under it now superceded the \$46 million UNFPA earmark for FY1985, USAID would reprogram \$10 million for voluntary family planning programs for use elsewhere in the world. He also stated that if Kemp-Inouye was enacted again in FY1986 (see footnote 13), UNFPA could receive funds under only three conditions: 1) UNFPA withdraws its program from China; 2) China would begin to punish abuses concerning coercive abortion and involuntary sterilizations; or 3) UNFPA "radically" changes its program in China, such as by supplying only contraceptive materials.<sup>20</sup>

Almost immediately, the Population Institute, an NGO, filed suit against Administrator McPherson and the U.S. government to block the redirection of UNFPA funds and invalidate the determination. On August 12, 1986, the Court upheld the Administration's decision to withhold UNFPA funding.

From 1986 to 1992, USAID continued to request funds for UNFPA, although with the understanding that a decision on whether to transfer the money would be reviewed under the terms of the Kemp-Kasten amendment, which Congress also continued to enact each year in the foreign assistance appropriations. In each year, USAID found that UNFPA was ineligible for U.S. support.

**Reinterpretation of Kemp-Kasten by the Clinton Administration.** As one of his first acts as chief executive, President Clinton reversed the Mexico City policy of Presidents Reagan and Bush, and issued a determination finding that UNFPA programs in China did not violate the terms of Kemp-Kasten. The policy reversal was based on several factors, including:

- **Ambiguity of the Kemp-Kasten language** — The Administration noted that the Court of Appeals, in considering the case brought by the Population Institute, deferred to the USAID interpretation of Kemp-Kasten because it was a "reasonable reading of an ambiguous provision and did not otherwise conflict with the expressed intention of Congress." The Administration argued that because of this ambiguity, the new Administration had a right to interpret Kemp-Kasten for itself.
- **Over-reliance on the 1985 statements by Representative Kemp** — The Administration pointed especially to the 1985 Court of Appeals opinion that questioned the relevance of the additional views of Representative Kemp interpreting the Kemp-Inouye amendment. The Court observed that, although the Administration

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<sup>19</sup> Letter from IDCA Acting Director Peter McPherson to Senator Hatfield, Chairman of the Senate Appropriations Committee, September 25, 1985, p. 2.

<sup>20</sup> Ibid., p. 2.

considered Representative Kemp's remarks as the clearest explanation of an "ambiguous term," Congressman Kemp could not convince his colleagues to adopt his views in the committee report itself.

- **Focus should be on the terms "coercive" and "involuntary" and the intent of the organization in question** — The Clinton Administration believed that it was reasonable to apply the Kemp-Kasten restrictions only in cases where the organization knowingly and intentionally provided direct support for, or helped manage people or agencies who were clearly engaged in, coercive abortion or involuntary sterilization. The Administration concluded that although it remained concerned about coercive practices in China, it believed that UNFPA did not "knowingly" or "intentionally" support directly such practices.<sup>21</sup>

The issue of coercive practices within China's family planning program and the role of UNFPA remained controversial throughout the Clinton Administration and during the first year of the George W. Bush Presidency. Congress continued to include Kemp-Kasten language in Foreign Operations Appropriations acts, and in most years attached additional conditions on UNFPA contributions that required the organization to (1) keep U.S. funds in a separate account, (2) not spend U.S. money in China, and (3) to forego transfers from the United States equal to the amount UNFPA allocated for its China program. In some years, the United States withheld about \$3.5 million from UNFPA, an amount that approximated the size of UNFPA's expenditures in China.

For a brief period in 1997, the controversy over whether to fund UNFPA subsided when UNFPA's program in China expired and new activities did not resume immediately. Nevertheless, despite opposition from the United States, UNFPA re-established a program in China, and in FY1999 appropriation legislation, Congress prohibited all U.S. contributions to the organization. Congress restored funding the following year, but with the requirement that an amount equal to UNFPA expenditures in China be withheld. This resulted in a \$3.5 million deduction in FY2000 and FY2001. (For details on Administration actions and legislative restrictions regarding UNFPA funding, 1985-2008, see **Appendix A.**)

## **George W. Bush Administration Reviews Kemp-Kasten**

The first budget submitted by President Bush for FY2002 included a proposed \$25 million U.S. contribution to UNFPA. While the new Administration re-instated the so-called "Mexico City policy" restrictions that applied to bilateral family planning funds, there was no indication of a change in policy regarding UNFPA and the Kemp-Kasten conditions attached to U.S. contributions. Subsequently, in the FY2002 Foreign Operations Appropriations, Congress provided "not more than" \$34 million for UNFPA. Although such language represented a ceiling for the amount

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<sup>21</sup> These policy views are drawn from letters of USAID Administrator Brian Atwood to Senator Helms, dated August 6 and September 10, 1993.



of funds for UNFPA, as opposed to a floor, or minimum amount that must be provided, the language was similar to prior year Foreign Operations bills that had been fulfilled by the Clinton Administration, minus the withholding requirement.

However, in the face of the conflicting evidence released in late 2001 by the Guy and Biegman investigation teams (see section “UNFPA and China” for further details on the group’s findings), in mid-January 2002, the White House placed a hold on U.S. contributions to UNFPA pending a review of the organization’s program in China. In a statement before the Senate Foreign Relations Committee on February 27, 2002, Assistant Secretary of State for Population, Refugees and Migration Arthur Dewey noted that the legislative text regarding UNFPA funding — “not more than \$34 million” — gave the Administration considerable discretion over exactly how much to provide UNFPA. While stating that the United States supported UNFPA’s work worldwide to provide safe and voluntary family planning, enhance maternal and infant health, and prevent the spread of HIV/AIDS, the Administration remained concerned about periodic reports of abuse and coercion in China’s family planning program. Given new information and the requirements of the Kemp-Kasten amendment, Assistant Secretary Dewey argued that the State Department was obligated to investigate the matter further before releasing any funds in FY2002.<sup>22</sup>

**State Department Assessment and Findings.** The State Department sent an investigation team to China for a two-week review of UNFPA programs on May 13, 2002. The team was led by former Ambassador William Brown, and included Bonnie Glick, a former State Department official, and Dr. Theodore Tong, a public health professor at the University of Arizona. The State Department’s assessment team filed its report with Secretary Powell on May 29, making a series of findings and recommendations.<sup>23</sup> The group found that:

- There was no evidence that UNFPA “has knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization” in China;
- Despite some relaxation of government restrictions in counties where UNFPA operates, China maintained coercive elements in its population programs in law and practice; and
- Chinese leaders viewed “population control as a high priority” and remained concerned over implications for socioeconomic change.

On the basis of these findings, Ambassador Brown and his colleagues recommended that:

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<sup>22</sup> Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women’s Lives*. Committee Hearings, February 2002.

<sup>23</sup> *Report of the China UN Population Fund (UNFPA) Independent Assessment Team*, released by the Department of State on May 29, 2002. See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for the report’s full text.

- The United States should release not more than \$34 million of previously appropriated funds to UNFPA;
- Until China ends all forms of coercion in law and practice, no U.S. government funds should be allocated to population programs in China; and
- Appropriate resources, possibly from the United States, should be allocated to monitor and evaluate Chinese population control programs.

**UNFPA Found in Violation of Kemp-Kasten.** Subsequent to the findings and recommendations of the Brown investigation, on July 22, 2002, Secretary of State Powell, to whom the President had delegated the decision, announced that UNFPA remained in violation of Kemp-Kasten and ineligible for U.S. funding. The State Department's analysis of the Secretary's determination found that even though UNFPA did not "knowingly" support or participate in a coercive practice, that alone would not preclude the application of Kemp-Kasten. Instead, a finding that the recipient of U.S. funds — in this case UNFPA — simply supports or participates in such a program, whether knowingly or unknowingly, would trigger the restriction. The assessment team found that the Chinese government imposes fines and penalties on families ("social compensation fees") that have children exceeding the number approved by the government. The Department further noted that UNFPA had funded computers and data-processing equipment that had helped strengthen the management of the Chinese State Family Planning Commission. Beyond the legitimate uses of these and other items financed by UNFPA, such equipment facilitated, in the view of the State Department, China's ability to impose social compensation fees or perform abortions by coercion. The State Department analysis concluded that UNFPA's involvement in China's family planning program "allows the Chinese government to implement more effectively its program of coercive abortion."<sup>24</sup>

## Subsequent Administration Reviews and Legislative Action

**FY2008 Appropriations and UNFPA Funding.** The Administration proposed that \$25 million be made available to UNFPA if the organization becomes eligible for funding under the terms of the Kemp-Kasten amendment. The funds would be drawn from the Administration's proposed \$324.8 million for bilateral family planning programs.

**House Actions.** On June 21, 2007, the House of Representatives passed H.R. 2764, the State, Foreign Operations, and Related Programs Appropriations Bill, FY2008, which directs that \$40 million be made available to UNFPA if it becomes eligible for U.S. funding under the Kemp-Kasten amendment. It specifies that \$23 million of the \$40 million should be derived from the International Organizations and

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<sup>24</sup> Department of State, *Analysis of Determination that Kemp-Kasten Amendment Precludes Further Funding to UNFPA under P.L. 107-115*. Released on July 18, 2002. See [<http://www.state.gov/g/prm/rls/other/12128.htm>] for the full text.

Programs (IOP) account. The bill also adds a reporting requirement to the Kemp-Kasten amendment. Section 660 specifies that any determination made under the authority of the amendment “must be made no later than six months after the date of enactment of this Act, and must be accompanied by a comprehensive analysis as well as the complete evidence and criteria used to make the determination.” The bill requires the Secretary of State to submit a report on UNFPA funding to the appropriate congressional committees no later than four months after the bill is enacted. The report shall indicate “the amount of funds that the UNFPA is budgeting for the year in which the report is submitted for a country program in the People’s Republic of China.”<sup>25</sup> Under the provision, if the Secretary of State’s report indicates that UNFPA funds will be used for a program in China, then the funds “shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted.”<sup>26</sup>

**Senate Actions.** The Senate Committee on Appropriations reported H.R. 2764, the FY2008 State and Foreign Operations bill, on June 22, 2007.<sup>27</sup> The bill, as marked up by the committee, did not designate a specific dollar amount for UNFPA. It did, however, attempt to modify the Kemp-Kasten amendment from previous years. The Senate bill stated: “... none of the funds made available in this Act, nor any unobligated balances from prior appropriations may be made available to any organization or program which directly supports coercive abortion or involuntary sterilization.” Proponents of the language contend that the addition of the word “directly” may make it more difficult for the President to certify that UNFPA supports coercive abortion programs in China. In addition, some believe the new language may weaken the authority of the President to determine the eligibility of organizations under the Kemp-Kasten amendment. (The House-passed bill and some previous versions of the Kemp-Kasten amendment are identical or similar to the current Senate language, except they include the clause “as determined by the President of the United States.”)<sup>28</sup> The committee language was ultimately defeated on September 6, 2007, through the adoption of an amendment introduced by Senator Sam Brownback during floor debate.<sup>29</sup> The amendment struck the committee language and inserted a previous version of the Kemp-Kasten amendment.

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<sup>25</sup> Ibid. Sec. 660.

<sup>26</sup> The provision also states, “Nothing in this section shall be construed to limit the authority of the President to deny funds to any organization by reason of the application of another provision of this Act or any other provision of law.” [Sec. 660(f) of H.R. 2764 as passed by the House of Representatives, June 21, 2007.]

<sup>27</sup> S.Rept. 110-128, State, Foreign Operations, and Related Programs Appropriations Bill, June 22, 2007.

<sup>28</sup> The FY2008 House-passed version of the Kemp-Kasten amendment in H.R. 2764 reads: “... none of the funds made available in this Act, nor any unobligated balances from prior appropriations may be made available to any organization or program which, *as determined by the President of the United States*, directly supports coercive abortion or involuntary sterilization.” (Emphasis added.)

<sup>29</sup> See S.Amdt 2707 to H.R. 2764, the State, Foreign Operations, and Related Programs Appropriations Bill, FY2008, September 6, 2007.

The Senate passed its version of H.R. 2764 on September 6, 2007. The act does not designate a specific dollar amount for UNFPA, and did not include any of the UNFPA reporting requirement specified in the House-passed version of H.R. 2764. (See “House Actions” section for more information.)

**FY2007 Appropriations and UNFPA Funding.** In its FY2007 budget request, for the second year in a row, the Administration did not reserve funds for UNFPA funding in the IOP account. If UNFPA were found eligible under Kemp-Kasten, approximately \$25 million in UNFPA funding may be drawn from the Administration’s proposed \$357 million budget for international family planning activities.

On June 9, 2006, the House of Representatives passed H.R. 5522, the FY2007 Department of State, Foreign Operations, and Related Programs Appropriations Act. The bill stated that U.S. contributions to UNFPA will be the same as the provisions in P.L. 109-102, the FY2006 Foreign Operations Appropriations Act (see below section on UNFPA appropriations and funding in FY2006), except that \$22.275 million should be derived from the IOP account for UNFPA funding (the FY2006 amount was \$22.5 million).<sup>30</sup> As in some previous years, UNFPA funds are subject to Kemp-Kasten restrictions.

FY2007 Foreign operations programs are being funded under the terms of a continuing resolution (P.L. 109-289, as amended by P.L. 110-5), which provides funding similar to the FY2006 level with some adjustments. As a result, the current level of UNFPA funding should be on or around \$22.5 million, the enacted level in FY2006.

On September 6, 2007, the Administration sent a letter to Members of Congress stating that UNFPA is ineligible for FY2007 funds because of its support of coercive family planning practices in China.<sup>31</sup> Unused FY2007 IOP funds designated for UNFPA will likely be transferred to other family planning programs.

**FY2006 Appropriations and UNFPA Funding.** During its first four years, the Administration requested a reserve of approximately \$25 million per year for UNFPA funding from the IOP account of the Foreign Operations spending measure. For FY2006, the Administration did not set aside a reserve. USAID officials said, however, that if UNFPA was found eligible under Kemp-Kasten, a contribution of \$25 million could be withdrawn from the Child Survival and Health account where some previously unused UNFPA funds had been transferred.

During consideration of H.R. 3057, the FY2006 Foreign Operations Appropriations bill, the House and Senate took different approaches to the UNFPA funding issue. (See “Efforts to Amend Kemp-Kasten in the 109<sup>th</sup> Congress” section for a review of these provisions.) On November 14, 2005, the President signed the FY2006 Foreign Operations Appropriations Act (P.L. 109-102), which earmarked

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<sup>30</sup> Committee on Appropriations Report to Accompany H.R. 5522, U.S. House of Representatives, 109-486, 2d session, 109<sup>th</sup> Congress, Sec. 560, p. 94.

<sup>31</sup> “White House: No U.N. Funding for China,” *The Associated Press*, September 7, 2007.

\$34 million to UNFPA, subject to Kemp-Kasten restrictions. The law states that the funds should be drawn from the IOP account and the Child Survival and Health Programs fund, with no less than \$22.5 million drawn from the IOP account. If UNFPA were determined ineligible for funding under Kemp-Kasten provisions, P.L. 109-102 directed that funds would be distributed to the Child Survival and Health Programs Fund for family planning and health activities.

On September 13, 2006, the Department of State transmitted a letter to the House Committee on Appropriations with the determination that UNFPA “supports the Chinese government’s program of coercive abortion and sterilization” by recently providing financial and technical resources to China — making UNFPA ineligible for U.S. funding in FY2006. The State Department emphasized that it has urged China to end such coercive practices, and will continue to do so given the importance of the issue.<sup>32</sup>

**FY2002-FY2005 Appropriations and UNFPA Funding.** Following the July 2002 determination, the Administration notified Congress that it intended to transfer to USAID \$34 million from FY2002 appropriations in order to fund bilateral family planning programs in which UNFPA had no involvement. Congressional committees placed a hold on this transfer while the House and Senate debated other proposals regarding UNFPA funding for FY2003 and FY2004, and changes to the Kemp-Kasten provision.

In the Foreign Operations appropriation for FY2003, signed into law on February 20, 2003, Congress directed that UNFPA receive the funds appropriated in the FY2002 appropriation, plus an equal amount for FY2003, so long as the President determined that “UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization.”<sup>33</sup> However, on September 25, 2003, the State Department notified Congress that the “factual circumstances” did not support making a determination that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization. The Administration again proposed transferring funds earmarked by Congress for UNFPA to USAID for bilateral family planning activities.

The question over the allocation of FY2002 and FY2003 UNFPA funds was settled in the FY2004 Foreign Operations Appropriations, signed into law on January 23, 2004,<sup>34</sup> when Congress specified that the \$34 million withheld in FY2002 be used for family planning programs in 12 countries, including Congo, Ethiopia, Uganda, Haiti, and Russia. The \$25 million in FY2003 funds that was earmarked for but not transferred to UNFPA would be available for vulnerable children and for a new

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<sup>32</sup> A copy of the State Department letter from Under Secretary of State for Political Affairs Nicholas Burns to the House Appropriations Committee is available at [<http://maloney.house.gov/documents/women/unfpa/20060913UNFPAdetermination.pdf>].

<sup>33</sup> Section 572 of the FY2003 Foreign Operations Appropriation, enacted in Division E of P.L. 108-7.

<sup>34</sup> Section 567 of the FY2004 Foreign Operations Appropriation, enacted in Division D of P.L. 108-199.

initiative assisting young women, mothers, and children who are victims of trafficking in persons.

The funding bill for FY2004 earmarked \$34 million subject to Kemp-Kasten conditions. On July 16, 2004, the State Department issued a finding that UNFPA remained in violation of the Kemp-Kasten amendment due to its continuing programs in China, and that the organization would not receive the \$34 million appropriated for FY2004. The statement said that the United States had been urging UNFPA and China to modify the organization's program in a manner that would permit U.S. support to resume. The State Department, however, found that no key changes had occurred in UNFPA's programs. State Department officials indicated that the Administration would submit at some point a re-programming notification to Congress proposing that the unspent UNFPA funds be used to support programs combating human trafficking and prostitution. Prior to such notification, however, Congress directed, as part of the FY2005 Foreign Operations appropriations measure, that FY2004 funds earmarked for UNFPA be spent on both anti-trafficking programs (\$12.5 million) and family planning and maternal and reproductive health activities (\$12.5 million), rather than exclusively on anti-trafficking programs as the Administration had signaled.<sup>35</sup>

For FY2005, Congress approved \$34 million for UNFPA, subject to Kemp-Kasten restrictions. If the President determined that UNFPA was ineligible for U.S. funding under Kemp-Kasten, P.L. 108-447 directed that the Administration use the \$34 million for USAID-managed family planning, maternal and reproductive health programs. Accordingly, in a brief statement on September 17, 2005, the State Department said that while the United States had been urging UNFPA and China to modify the organization's program in a manner that would permit U.S. support to resume, no key changes had occurred that would allow a resumption of U.S. funding under the conditions of the Kemp-Kasten provision.

**Efforts to Fund UNFPA in the 110<sup>th</sup> Congress.** On May 2, 2007, Representative Carolyn Maloney introduced H.R. 2114, the Repairing Young Women's Lives Around the World bill, which would provide U.S. voluntary contributions to UNFPA only for the prevention, treatment, and repair of obstetric fistula. The bill was referred to the Committee on Foreign Affairs. In addition, on June 7, 2007, Representative Joseph Crowley introduced H.R. 2604, the United Nations Population Fund Women's Health and Dignity bill. It would provide financial and other support to the United Nations Population Fund, and was referred to the Committee on Foreign Affairs.

**Efforts to Amend Kemp-Kasten in the 109<sup>th</sup> Congress.** During the 109<sup>th</sup> Congress, lawmakers tentatively approved legislative efforts to modify the Kemp-Kasten language in a way that might have paved the way for a U.S. contribution to UNFPA in FY2006. Ultimately they were defeated. Opponents of the Kemp-Kasten restrictions offered an amendment during House debate on the FY2006 Science, State, Justice, and Commerce Appropriation (SSJC, H.R. 2862),

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<sup>35</sup> Section 560 of the FY2005 Foreign Operations Appropriation, enacted in Division D of P.L. 108-447.

that would have blocked the State Department from using funds provided in H.R. 2862 to enforce any provision of law that restricts or prohibits funding for UNFPA. Although the SSJC appropriation measure does not contain funds for international family planning programs or UNFPA contributions, State Department offices that oversee broad U.S. population policy and manage U.S. voluntary contributions to international organizations, including UNFPA, are funded in the SSJC bill. The effect of the amendment, offered by Representatives Maloney, Shays, Crowley, and Israel, would have been to bar the enforcement of the Kemp-Kasten restriction that is part of the Foreign Operations appropriation measure. The House defeated the Maloney amendment on June 16, 2005, by a vote of 192-233.

The FY2006 Foreign Operations Appropriations Act (H.R. 3057), as passed by the House, provided \$34 million for UNFPA, subject to the Kemp-Kasten provision. In the event that UNFPA would be found ineligible for U.S. support, the House measure required that the funds be used by USAID for bilateral family planning programs. The Senate-passed measure included a \$35 million UNFPA contribution, money that would have to be kept by UNFPA in a separate account, could not be spent in China, and could not be used to fund abortions. Under the terms of an amendment by Senators Leahy, Clinton, and others, approved on the Senate floor, UNFPA funds would have been available for six specific activities: 1) safe child birth and emergency obstetric care; 2) obstetric fistula treatment and care; 3) contraceptive supplies for preventing pregnancies and sexually transmitted diseases, including HIV/AIDS; 4) restoration of maternal health care in locations hit by natural disasters; 5) elimination of female genital mutilation; and 6) access by unaccompanied women and other vulnerable individuals to vital services. Under the terms of the Senate bill, if the Administration found UNFPA ineligible for U.S. support, any funds drawn from the IOP account (\$20 million) would have been transferred to USAID for additional bilateral family planning activities. The Conference Report (H.Rept. 109-265) to the final measure (P.L. 109-102) adopted the House-passed \$34 million for UNFPA and dropped the Senate modifications to Kemp-Kasten.

## **UNFPA and China**

One issue that has been debated among many Members of Congress and past and current Administrations involves whether, and to what extent, UNFPA programs in China violate the Kemp-Kasten Amendment. As previously mentioned, initial UNFPA programs in China concentrated on bolstering China's capacity for data collection and analysis, and maternal and child health/family planning activities. Following the Cairo population conference in 1994 and the conclusion of UNFPA's third Chinese program, UNFPA and Beijing officials began to discuss significant changes for a fourth agreement that would more closely follow the principles set out in Cairo.

The subsequent UNFPA program, launched in 1998, concentrated efforts in 32 counties where birth targets and quotas had been eliminated by the Chinese government. The fourth program shifted from a more administrative family planning approach — focusing on population control and imposed contraceptive methods and orders — to an “integrated, client-oriented reproductive health approach in the

project counties” that included education and counseling regarding informed choice of contraceptive methods and reproductive health rights. According to UNFPA, service delivery points were upgraded to offer integrated reproductive health services in both the Chinese State Family Planning Commission and the Ministry of Health. UNFPA said that there had been a “downward trend” in the abortion ratio in these counties, and that the organization had played a “catalytic role in introducing a comprehensive, voluntary reproductive health approach,” that included rigorous monitoring of the projects.<sup>36</sup> The fifth program, covering the period 2003-2005, expanded many of the earlier initiatives.

In June 2005, UNFPA approved a sixth program for China that began in 2006 and is to span five years. The \$27 million program is to build on the policy changes made in 1998 and includes two components. The reproductive health element seeks to increase the utilization of high-quality, client-centered, gender-sensitive reproductive health and family planning services, and to reduce the vulnerability and risk behavior associated with HIV/AIDS among migrants, young people, and other vulnerable groups. The population and development component centers on strengthening the government’s capacity for addressing population-related policies, especially those regarding gender, migration, and aging issues, and enhancing the government’s ability to collect and apply surveillance data, particularly data related to HIV/AIDS.<sup>37</sup>

## Investigations of UNFPA Programs in China

During implementation of the fourth and fifth programs, UNFPA’s operations in China have been closely scrutinized by several investigatory teams, including one dispatched by the State Department in 2002. Most of these groups concluded that UNFPA was not involved in supporting coercive or involuntary family planning programs in China, although one — sponsored by the Population Research Institute (PRI) — concluded otherwise. These conflicting reports, together with continuing reviews of UNFPA practices in China and varying interpretations by U.S. officials, sparked renewed controversy and extensive congressional debate beginning in 2001 over the appropriate role of the United States in financially supporting UNFPA operations worldwide. The four non-U.S. government sponsored investigations came to the following conclusions.

**The Population Research Institute.** PRI’s report concluded that UNFPA “directly supports coercive family planning with funding, and through its complicity with the implementation of policies which are fundamentally coercive in principle and practice.” The PRI team, led by Josephine Guy, spent four days in Sihui County, Guangdong Province, in late September 2001, conducting numerous interviews with alleged victims and witnesses of coercive practices. According to the team’s interview notes and videos, non-voluntary abortions and use of IUDs, mandatory

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<sup>36</sup> UNFPA, *Country Programme Outline for China*. DP/FPA/CPO/CHN/5\*, July 12, 2002. UNFPA, *Report of the International Review Team on the UNFPA China Country Programme*, October 2001.

<sup>37</sup> UNFPA, *Country Programme Document for China*. DP/FPA/CPD/CHN/6, October 10, 2005.



examinations, and punishment for non-compliance — both imprisonment and economic fines — continued in this county which was among the 32 in which UNFPA supported programs.<sup>38</sup>

**The Biegan Group.** This team found that UNFPA plays a “positive and important catalytic role in the reform of reproductive health and family planning services in China” and in moving China away from coercive family planning practices and abuses. It recommended that UNFPA continue its program in China and expand its scope and resources in the future.<sup>39</sup> This UNFPA-sponsored review team, led by Ambassador Nicolaas Biegan, former Dutch Ambassador to the U.N. and including diplomats from Honduras, the Czech Republic, and Botswana, conducted a six-day investigation in October 2001, interviewing officials and visiting sites in Beijing and in Sihui and Qianjiang Counties.

**British All-Party Parliamentary Group on Population, Development, and Reproductive Health.** The British parliamentary team found that although problems remain in some parts of China regarding reproductive rights, the Chinese government was “moving in the right direction, with the support of UNFPA.” The bi-partisan group spent a week in Beijing and Yunnan Province in April 2002, reporting that UNFPA programs were having a “positive effect” in reforming Chinese reproductive health services and offering women “a choice over their own lives.”<sup>40</sup>

**The Interfaith Delegation to China.** This group returned from a September 2003 visit finding, among other things, that the Chinese government was taking steps to end coercive family planning practices, that UNFPA was a major force in China’s transition to voluntary policies, and that UNFPA did not support or participate in managing China’s family planning program. While the group acknowledged that in such a brief trip it could not gain a comprehensive view of China’s family planning activities or the work of UNFPA, it felt confident in recommending that the United States should maintain a policy of constructive engagement with China regarding family planning matters, and that U.S. funding for UNFPA should be restored, and the Kemp-Kasten amendment revised. The nine-member mission was sponsored by Catholics for a Free Choice.<sup>41</sup>

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<sup>38</sup> Population Research Institute, *UNFPA, China, and Coercive Family Planning*. December 12, 2001. See also two congressional hearings in which Josephine Guy testified: House Committee on International Relations, *Coercive Population Control in China: New Evidence of Foreign Abortion and Forced Sterilization*. Committee Hearing, October 17, 2001; and Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women’s Lives*. Committee Hearings, February 2002.

<sup>39</sup> UNFPA, *Report of the International Review Team on the UNFPA China Country Programme*, October 2001. Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women’s Lives*. Committee Hearings, February 2002.

<sup>40</sup> China Mission Report by UK MP’s, 1<sup>st</sup> April - 9<sup>th</sup> April 2002. Found at [<http://www.appg-popdevrh.org.uk>].

<sup>41</sup> Catholics for a Free Choice. *The United Nations Population Fund in China: A Catalyst for Change*. Report of an Interfaith Delegation to China. 2003.

## Kemp-Kasten Application Beyond UNFPA

Critics of the Administration policy, including some Members of Congress, have expressed concern over what they perceive to be a shift in the interpretation of Kemp-Kasten restrictions related to UNFPA and other international organizations. They point to a USAID notification to the Global Health Council that the agency would not provide funding for the Council's 31<sup>st</sup> annual meeting in June 2004 because UNFPA would be a participant. Some believe that this represented a State Department warning to UNICEF, the World Health Organization, and other organizations that continued involvement in joint programs with UNFPA might jeopardize their funding support from the United States.<sup>42</sup>

In 2003, the State Department decided that it would fund a \$1 million HIV/AIDS program supporting African and Asian refugees only if the implementing NGO group — Reproductive Health for Refugees Consortium — did not include Marie Stopes International among its members. Marie Stopes International is a British-based reproductive health organization that is also a major implementing partner of UNFPA in China. The State Department, while not making a legal determination under the Kemp-Kasten amendment, felt that an action not to fund Marie Stopes International would be the “approach most consistent with U.S. policy.”<sup>43</sup> On August 11, 2003, however, the Consortium declined to accept the \$1 million grant due to the exclusion of Marie Stopes International.

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<sup>42</sup> Christopher Marquis. U.S. is Accused of Trying to Isolate U.N. Population Unit. *New York Times*, June 21, 2004. Letter to Secretary of State Colin Powell from Representatives Maloney, Lee, Waxman, and Crowley, June 18, 2004.

<sup>43</sup> *Details for Funding the Reproductive Health Consortium (Taken Question)*, Office of the State Department's Spokesman, August 27, 2003.

## Appendix A. UNFPA Administration Policy and Legislative Conditions, 1985-2006

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1985	\$26 million for UNFPA.	<p><b>Regular FY1985 appropriation:</b>  — Not less than \$46 million, or 16% of Population Assistance, whichever is lower, shall be made available for UNFPA.  *****</p> <p><b>Supplemental FY1985 appropriation:</b>  — Kemp-Kasten conditions first enacted.</p>	UNFPA received \$36 million, after the withholding of \$10 million to express U.S. disapproval of coercion in China's family planning program.
1986	\$38 million for UNFPA.	— Kemp-Kasten conditions. — No specific UNFPA provision.	No UNFPA funding.
1987	\$32 million for UNFPA, subject to Kemp-Kasten.	— Kemp-Kasten conditions. — No specific UNFPA provision.	No UNFPA funding.
1988	\$25 million for UNFPA, subject to Kemp-Kasten.	— Kemp-Kasten conditions. — No specific UNFPA provision.	No UNFPA funding
1989	\$20 million for UNFPA, subject to Kemp-Kasten.	— Kemp-Kasten conditions. — No specific UNFPA provision.	No UNFPA funding.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1990	\$19.39 million for UNFPA, subject to Kemp-Kasten.	<p><b>Appropriation passed Congress but vetoed by the President:</b></p> <ul style="list-style-type: none"> <li>— Not less than \$15 million shall be made available for UNFPA, notwithstanding the Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account and UNFPA does not commingle amounts with other sums.</li> <li>— Entire \$15 million shall be refunded if any used by UNFPA for family planning programs in China or used for any abortion related activity in any country.</li> </ul> <p>*****</p> <p><b>Subsequent appropriation signed by the President:</b></p> <ul style="list-style-type: none"> <li>— Kemp-Kasten conditions.</li> <li>— No specific UNFPA provision.</li> </ul>	<p>No UNFPA funding</p> <p>Earlier, \$15 million appropriation for UNFPA vetoed by the President.</p>
1991	\$10 million for UNFPA, subject to Kemp-Kasten	<ul style="list-style-type: none"> <li>— Kemp-Kasten conditions.</li> <li>— No specific UNFPA provision.</li> </ul>	No UNFPA funding
1992	\$10 million for UNFPA, subject to Kemp-Kasten.	<ul style="list-style-type: none"> <li>— Kemp-Kasten conditions.</li> <li>— No specific UNFPA provision.</li> </ul>	No UNFPA funding
1993	No UNFPA funding.	<ul style="list-style-type: none"> <li>— Kemp-Kasten conditions.</li> <li>— No specific UNFPA provision.</li> </ul>	No UNFPA funding.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1994	\$50 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$40 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</li> <li>— Not more than half of the UNFPA contribution may be provided before March 1, 1994.</li> <li>— Secretary of State report to Congress by Feb. 15, 1994, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$10 million shall be deducted after March 1 from the \$40 million U.S. contribution.</li> </ul>	UNFPA received \$40 million from the United States.
1995	\$60 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$50 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</li> <li>— Not more than half of the UNFPA contribution may be provided before March 1, 1995.</li> <li>— Secretary of State report to Congress by Feb. 15, 1995, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$7 million shall be deducted after March 1 from the \$50 million U.S. contribution.</li> </ul> <p>*****</p> <ul style="list-style-type: none"> <li>— In separate legislation, Congress rescinded \$15 million of the original \$50 million appropriation for UNFPA.</li> </ul>	UNFPA received \$35 million from the United States, after a rescission of \$15 million.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1996	\$55 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$30 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</li> <li>— Not more than half of the UNFPA contribution may be provided before March 1, 1996.</li> <li>— Secretary of State report to Congress by Feb. 15, 1996, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$7 million shall be deducted after March 1 from the \$30 million U.S. contribution.</li> </ul>	UNFPA received \$22.8 million from the United States, after a withholding of \$7.2 million.
1997	\$30 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</li> <li>— Not more than half of the UNFPA contribution may be provided before March 1, 1997.</li> <li>— Secretary of State report to Congress by Feb. 15, 1997, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</li> </ul>	UNFPA received \$25 million from the United States.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1998	\$30 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> </ul> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <ul style="list-style-type: none"> <li>— Not more than half of the UNFPA contribution may be provided before March 1, 1998.</li> <li>— Secretary of State report to Congress by Feb. 15, 1998, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</li> </ul>	UNFPA received \$20 million from the United States, after a withholding of \$5 million.
1999	\$25 million for UNFPA.	<ul style="list-style-type: none"> <li>— No funds may be made available for UNFPA.</li> <li>— Kemp-Kasten conditions included in enacted appropriation.</li> </ul>	UNFPA received no funding from the United States.
2000	\$25 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> </ul> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</p> <ul style="list-style-type: none"> <li>— Secretary of State report to Congress by Feb. 15, 2000, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</li> </ul>	UNFPA received \$21.5 million from the United States, after a withholding of \$3.5 million.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2001	\$25 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</li> <li>— Secretary of State report to Congress by Feb. 15, 2001, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</li> </ul>	UNFPA received \$21.5 million from the United States, after a withholding of \$3.5 million.
2002	\$25 million for UNFPA.	<ul style="list-style-type: none"> <li>— Not more than \$34 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</li> </ul>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2002 UNFPA funds reprogrammed for bilateral family planning/ maternal &amp; re-productive health activities in several developing countries.</p>



Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2003	\$25 million “reserve” available for UNFPA, subject to Kemp-Kasten conditions.	<ul style="list-style-type: none"> <li>— Not more than \$34 million in FY2002 appropriations and an equal amount from FY2003 appropriations shall be available for UNFPA if the President determines that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization.</li> <li>— No funds for UNFPA may be used in China.</li> <li>— Other abortion restrictions in this act or in the FY2002 appropriation shall apply to UNFPA funding.</li> <li>— FY2002 conditions on UNFPA funding shall apply to FY2003 appropriations.</li> <li>— UNFPA funds deducted by the amount UNFPA spends in China in 2002 and 2003.</li> </ul>	<p>President did not issue a finding that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2003 UNFPA funds reprogrammed for assistance for “vulnerable children” and made available for a new initiative for assistance for young women, mothers and children who are victims of trafficking in persons.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2004	\$25 million reserve available for UNFPA, subject to Kemp-Kasten conditions.	<p>— Up to \$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</p> <p>— FY2002 UNFPA funds shall be made available for family planning, maternal &amp; reproductive health activities in the Democratic Republic of the Congo, Ethiopia, Nigeria, Tanzania, Uganda, Haiti, Georgia, Azerbaijan, Russia, Albania, Romania, and Kazakhstan.</p> <p>— FY2003 UNFPA funds shall be allocated for assistance for “vulnerable children” and made available for a new initiative for assistance for young women, mothers and children who are victims of trafficking in persons.</p> <p>— No UNFPA funds available for programs in China.</p> <p>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</p>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2004 UNFPA funds transferred to the Economic Support Fund account, with the intention to use in support of anti-trafficking in persons programs. Subsequently, FY2005 Foreign Operations Appropriations directed that of the FY2004 funds not provided to UNFPA, \$12.5 million shall be available for anti-trafficking</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2005	\$25 million reserve available for UNFPA, subject to Kemp-Kasten conditions.	<ul style="list-style-type: none"> <li>— \$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No UNFPA funds available for programs in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</li> <li>— If FY2005 funds are not made available to UNFPA, they shall be transferred to the Child Survival/Health account and used by USAID for family planning, maternal, and reproductive health activities.</li> <li>— Of the FY2004 funds earmarked for UNFPA, \$12.5 million shall be available for anti-trafficking programs and \$12.5 million shall be available for USAID for family planning, maternal, and reproductive health activities in Albania, Azerbaijan, the Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Kazakhstan, Kenya, Nigeria, Romania, Russia, Rwanda, Tanzania, Uganda, and Ukraine.</li> </ul>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2006	If UNFPA determined eligible for U.S. funds under the terms of Kemp-Kasten, \$25 million could be drawn from USAID's Child Survival and Health Account.	<ul style="list-style-type: none"> <li>— \$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No UNFPA funds available for programs in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</li> <li>— Of the \$34 million, \$22.5 million shall be derived from the State Department's International Organization and Programs account (IO&amp;P), with the remainder from the Child Survival and Health account (CSH).</li> <li>— Of the amount derived from the IO&amp;P account that are not made available for UNFPA, the funds shall be transferred to the CSH account, and shall be made available for family planning, and maternal and reproductive health services.</li> </ul>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p>
2007	If UNFPA determined eligible for U.S. funds under the terms of Kemp-Kasten, \$25 million could be drawn from the proposed family planning/ reproductive health program budget of \$357 million.	<p><b>Per H.R. 5522, Foreign Operations, Export Financing, and Related Programs Appropriations Bill:</b></p> <ul style="list-style-type: none"> <li>— \$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</li> <li>— No UNFPA funds available for programs in China.</li> <li>— No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</li> <li>— Of the \$34 million, \$22.275 million shall be derived from the State Department's International Organization and Programs account (IO&amp;P), with the remainder from the Child Survival and Health account (CSH).</li> <li>— Of the amount derived from the IO&amp;P account that are not made available for UNFPA, the funds shall be transferred to the CSH account, and shall be made available for family planning, and maternal and reproductive health services.</li> </ul>	<p>Pending under continuing resolution P.L. 109-289, as amended by P.L. 110-5</p> <p>UNFPA received no funding from the United States.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2008	If UNFPA determined eligible for U.S. funds under the terms of Kemp-Kasten, \$25 million could be drawn from the proposed family planning/ reproductive health program budget of \$324.8 million.	Final action pending.	Pending